

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

In re:)	Lead Case No. 1:03-cv-1000
)	
)	<u>CLASS ACTION</u>
UNUMPROVIDENT CORP.)	
ERISA BENEFITS DENIAL ACTIONS)	MDL Case No. 1:03-md-1552
)	
)	Judge Curtis L. Collier
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CAROL J. TAYLOR,)	
)	Case No. 1:03-cv-1009
Plaintiff,)	
)	<u>CLASS ACTION</u>
v.)	
)	MDL Case No. 1:03-md-1552
UNUMPROVIDENT CORP., et al.,)	
)	Judge Curtis L. Collier
Defendants.)	

ORDER REGARDING
PROPOSED AMENDMENTS TO FIRST MANAGEMENT ORDER

On December 22, 2003, the Court entered the First Management Order addressing the organization and management of the Coordinated Benefits Actions, a subset of cases within Multidistrict Litigation No. 1552 ("MDL-1552"). Parties to this litigation timely filed objections and proposed amendments regarding two sections of the First Management Order, matters the Court must resolve before the First Management Order becomes final. This Order addresses and resolves the matters raised by the parties.

I. CONSOLIDATED AMENDED CLASS ACTION COMPLAINT, SECTION VI.

Plaintiffs in the ERISA Benefits Denial Actions object to the last sentence in Section VI of the First Management Order, which states:

The Consolidated Amended Class Action Complaint shall supersede any of the complaints on file in any of the ERISA Benefits Denial Actions, and shall be the operative complaint for any of the actions currently or subsequently consolidated with the ERISA Benefits Denial Actions.

Plaintiffs request the court modify the First Management Order “to clarify that: i) the operative pleading will not ‘supersede’ all other pleadings for all purposes; and ii) plaintiffs have the option to designate an existing complaint as the operative pleading.”

A. Role of the Consolidated Amended Class Action Complaint

First, Plaintiffs appear uncomfortable with the word “supersede” used in Section VI of the First Management Order. As Plaintiffs recognize, actions transferred by the Judicial Panel on Multidistrict Litigation (“JPML”) are pending before this Court solely for pretrial proceedings. At the conclusion of pretrial proceedings, the actions transferred here by the JPML will be remanded to their original districts for further proceedings, if necessary. The obligation to remand these actions at the conclusion of pretrial proceedings is foundational and clear, and the First Management Order sets forth this reality in introductory remarks at the bottom of page two. Consequently, the First Management Order addresses management of the Coordinated Benefits Actions within MDL-1552 during pretrial proceedings before this Court.

Plaintiffs request the Court clarify that the Consolidated Amended Class Action Complaint will not supersede “all other pleadings for all purposes.” Because the Consolidated Amended Class Action Complaint controls only for pretrial purposes before this Court, and because this Court has

no jurisdiction over constituent actions transferred here by the JPML for other than pretrial proceedings, the Consolidated Amended Complaint has no bearing on the other pleadings for “all purposes.” In the event a constituent action is remanded to its original district, the complaint filed in that action—not the consolidated amended complaint filed in the Eastern District of Tennessee—will be the relevant document for all purposes as to that action, once pretrial proceedings before this Court are concluded.

As for the word “supersede,” the Court will not change the language of the First Management Order, but rather explain why the Consolidated Amended Class Action Complaint must supersede the other constituent complaints in the ERISA Benefits Denial Actions for pretrial purposes. Actions transferred by the JPML remain separate civil actions, but only for “purposes *other than* pretrial proceedings.” *See In re Transit Co. Tire Antitrust Litig.*, 67 F.R.D. 59, 64 (W.D. Mo. 1975) (emphasis added). For pretrial proceedings before a transferee judge, actions are consolidated as “a procedural device designed to promote judicial economy,” *Katz v. Realty Equities Corp.*, 521 F.2d 1354, 1358 (2d Cir. 1975), and “as a matter of convenience and economy in administration.” *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 158 F.R.D. 562, 571 (S.D.N.Y. 1994) (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97, 53 S. Ct. 721, 727-28, 77 L. Ed. 1331 (1933)). To this end, a consolidated amended complaint “operate[s] in the place of the individual complaints for pretrial purposes.” *In re Wirebound Boxes Antitrust Litig.*, 128 F.R.D. 262, 264 (D. Minn. 1989). Thus, it supersedes them. *See Webster’s Third New Int’l Dictionary* 2295 (1993) (“to take the place of and outmode by superiority: supplant and make inferior by better or more efficiently serving a function”). While the Consolidated Amended Class Action Complaint will supersede the constituent complaints in that it will operate in their place for pretrial purposes, each constituent complaint

remains in its action and will become operative once the particular action is remanded to its district of origin. In the meantime, the complaints in the constituent ERISA Benefits Denial Actions will remain in the background and pretrial litigation in this Court will proceed with reference to the Plaintiffs' Consolidated Amended Class Action Complaint. Accordingly, the Court **DENIES** Plaintiffs' request to modify the First Management Order with regard to the role of the consolidated amended complaint.

B. Designation of an Existing Complaint as the Operative Pleading

Second, Plaintiffs request the Court amend the First Management Order to allow them, at their option, to either file a Consolidated Amended Class Action Complaint or to designate one of the existing complaints in a constituent action to serve as the operative complaint. Among the main reasons for using a consolidated complaint in multidistrict litigation is “to prevent unnecessary duplication and . . . to reduce the potential for confusion.” *Katz*, 521 F.2d at 1358. For these reasons, the First Management Order directs Plaintiffs to file a consolidated amended complaint to serve as the operative complaint for pretrial purposes for the ERISA Benefits Denial Actions.

The Court appointed Lead Counsel for Plaintiffs in the ERISA Benefits Denial Actions to act in the best interests of the Plaintiffs in the various constituent actions, and this includes determining the content of the Consolidated Amended Class Action Complaint. If, in Lead Counsel's estimation, one of the constituent complaints sets forth the Plaintiffs' claims in a superior manner, Lead Counsel is free to restate the content of that complaint in the Consolidated Amended Class Action Complaint to be filed on Plaintiffs' behalf. That determination belongs to Lead Counsel. The First Management Order requires a new document—without regard to the source of the language contained therein—be filed on Plaintiffs behalf so that the Consolidated Amended

Class Action Complaint may serve as the initial pleading for pretrial proceedings in the ERISA Benefits Denial Actions as long as they are before this Court. Accordingly, the Court **DENIES** Plaintiffs' request to amend the First Management Order to permit the designation of an existing complaint as the operative complaint for pretrial purposes.

II. EFFECT OF TRANSFEROR COURT ORDERS, SECTION IX.

The UnumProvident Defendants seek clarification regarding the language in Section IX of the First Management Order, which addresses the status of orders entered in the various Coordinated Benefits Actions by transferor courts before the actions were transferred to this Court. Defendants also request the Court modify the Order to permit parties other than Lead Counsel for Plaintiffs to seek modification of previously existing orders.

When actions from various districts are consolidated and transferred for pretrial purposes by the JPML, a transferee court has two options regarding the effect of orders issued in the transferred actions before transfer occurred. The court could vacate all the orders previously entered in the cases, or it could allow the orders to remain in full force and effect. If the transferee court were to vacate all the orders, the parties would then be required to relitigate those matters before the transferee court, requiring duplication of effort and expense that would largely be unnecessary. These orders were entered by transferor courts on the basis of some rationale, and to revisit the rationale of each existing order would likely result in a waste of time and effort. To prevent such cost, the Court determined the existing orders in the actions should not be vacated but should continue to be given effect. This allows the actions to maintain the status they held when they were transferred into MDL-1552.

In this multidistrict litigation, Lead Counsel for Plaintiffs now stands in the place of diverse counsel who were involved in the actions before transfer to this district. Counsel for Plaintiffs in one action may have agreed to provisions in an order that inordinately hamper Lead Counsel's representation of Plaintiffs as a whole. Because Lead Counsel had no opportunity to influence certain orders previously entered in these actions, the Court allows Lead Counsel for Plaintiffs a limited opportunity to seek the modification of the orders entered by the transferor courts. Defendants need no such opportunity because their counsel were involved in each of the constituent actions and had opportunity to litigate or otherwise participate in the outcome of orders existing in the various actions. Therefore, the Court **DENIES** Defendants' request to adjust the language of Section IX to permit parties other than Plaintiff's Lead Counsel to seek modification of orders previously entered in the ERISA Benefits Denial Actions.

Nevertheless, the language in Section IX merely states the orders previously entered will continue to apply and Plaintiffs' Lead Counsel may seek modification of them for a limited time. The order does not prohibit any party from moving the Court to vacate or cease giving effect to an order previously entered in the constituent ERISA Benefits Denial Actions. Whether this Court or another court entered a given order, a party may file a motion to vacate an order previously entered. Of course, any such motion shall present the grounds on which the previously entered order should be vacated. No such motion should be filed unless the party raising the issue can present a reasonable argument why the previous efforts of counsel and the Court should be nullified and the issue be revisited. As discussed earlier, the Court specifically chose to maintain the effect of orders previously entered in these actions to prevent unnecessary litigation. The orders in the constituent cases were entered according to a successful rationale, and opposition to those orders must articulate

why that rationale should be rejected and the order vacated.

III. CONCLUSION

This Order constitutes the Court's ruling on objections and proposed amendments submitted by parties regarding the First Management Order. Accordingly, pursuant to Section XX of that Order, the First Management Order is final.

SO ORDERED.

ENTER:

CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE